



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2011

Mr. David K. Walker
County Attorney
Montgomery County
207 West Phillips, Suite 100
Conroe, Texas 77301

OR2011-07002

Dear Mr. Walker:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 418038.

The Montgomery County Sheriff's Department (the "sheriff") received a request for the mugshot and arrest record related to a named individual. You state the sheriff will withhold social security numbers under section 552.147 of the Government Code.¹ You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted the requested mugshot. To the extent information responsive to this portion of the request existed on the date the sheriff received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

¹Although you state the sheriff will redact social security numbers pursuant to Open Records Decision No. 684 (2009), we note that decision does not encompass social security numbers. *See* ORD 684. However, section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is made confidential by other statutes, such as section 236.6 of title 8 of the Code of Federal Regulations, which protects information regarding detainees held on behalf of the Immigration and Naturalization Service (the "INS").² This section provides as follows:

No person, including any state or local government entity or any privately operated detention facility, that houses, maintains, provides services to, or otherwise holds any detainee on behalf of the [INS] (whether by contract or otherwise), and no other person who by virtue of any official or contractual relationship with such person obtains information relating to any detainee, shall disclose or otherwise permit to be made public the name of, or other information relating to, such detainee. Such information shall be under the control of the [INS] and shall be subject to public disclosure only pursuant to the provisions of applicable federal laws, regulations and executive orders. Insofar as any documents or other records contain such information, such documents shall not be public records. This section applies to all persons and information identified or described in it, regardless of when such persons obtained such information, and applies to all requests for public disclosure of such information, including requests that are the subject of proceedings pending as of April 17, 2002.

8 C.F.R. § 236.6. We understand you to assert a portion of the information at issue pertains to an INS detainee. Based on your arguments and our review, we agree the sheriff is required to abide by rules promulgated by the INS with regard to INS detainees. *See id.* § 2.1 (providing that Secretary of Homeland Security may issue regulations to administer and enforce laws relating to immigration and naturalization of aliens); *see also ACLU of N.J., Inc. v. County of Hudson*, 799 A.2d 629 (N.J. 2002) (stating that while state possesses sovereign authority over operation of its jails, it may not operate them, in respect to INS detainees, in any way that derogates federal government's exclusive and expressed interest in regulating aliens). You do not provide our office with any applicable federal law, regulation, or executive order that provides the requestor with a right of access to the information at issue. We therefore conclude the information at issue, which we have marked, pertains to an INS detainee and is made confidential by section 236.6 of title 8 of the Code of Federal Regulations and must be withheld from the requestor under section 552.101 of the Government Code. *See ACLU*, 799 A.2d at 655 (concluding that because INS had authority to promulgate 8 C.F.R. § 236.6, provision preempts state law requiring disclosure of requested information); *see also English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990) (noting

²We note that the functions of the INS were transferred to the Department of Homeland Security on March 1, 2003. *See* Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002). However, as section 236.6 still refers to the agency at issue as "the INS," we will also do so in this ruling.

that state law is preempted to extent it actually conflicts with federal law); *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986) (noting that federal agency acting within scope of its congressionally delegated authority may preempt state regulation).

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the arrest report relates to a pending criminal prosecution. Based on your representations and our review, we find that release of the arrest report would interfere with the prosecution of the crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the sheriff may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

Section 552.130 excepts from disclosure information that relates to a motor vehicle title or registration issued by an agency of this state.³ Gov’t Code § 552.130(a)(2). We note section 552.130 does not apply to out-of-state motor vehicle record information. *Id.* We are unable to determine whether the vehicle identification number we have marked relates to a motor vehicle title or registration that was issued by an agency of this state. Accordingly, we must rule conditionally. To the extent the marked vehicle identification number relates to a motor vehicle title or registration that was issued by an agency of this state, the sheriff must withhold it pursuant to section 552.130. If the marked vehicle identification number does not relate to a motor vehicle title or registration issued by an agency of this state, this information may not be withheld under section 552.130.

In summary, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 236.6 of title 8 of the Code of Federal Regulations. The sheriff may withhold the information you have marked under section 552.108(a)(1) of the Government Code. To the extent the marked vehicle identification number relates to a motor vehicle title or registration that was issued by an agency of this state, the sheriff must withhold the Texas motor vehicle record information

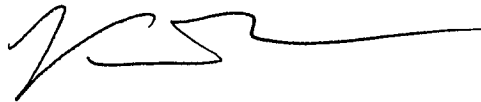
³We note this office has issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver’s license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. Although you state you will redact the submitted vehicle identification number under Open Records Decision No. 684, we note that decision does not authorize a governmental body to withhold a vehicle identification number under section 552.130 of the Government Code without requesting a decision from this office.

we have marked under section 552.130 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to be 'VB', followed by a long horizontal line extending to the right.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 418038

Enc. Submitted documents

c: Requestor
(w/o enclosures)